

FOURTH APPELLATE DISTRICT
DIVISION ONE
May 24, 2004

D043976 Cross v. Van Weelden

Defendant Leila Shirley Van Wheelden's appeal is dismissed as untimely.

D044280 In re Bruno on Habeas Corpus

The petition is denied without prejudice to refiling with proof of service that the superior court has already considered the matter or after consideration by the superior court.

FOURTH APPELLATE DISTRICT
DIVISION ONE
May 25, 2004

D041944 Rothschild v. Tyco International (US), Inc., et al.

Judgment affirmed. Rothschild to bear defendants' costs on appeal. Haller, J.; We Concur: Benke, Acting P.J., Huffman, J.

D043323 Knowles v. Superior Court of the County of San Diego/Labo et al.

(CERTIFIED FOR PUBLICATION) Let a writ of mandate issue ordering the superior court to: (1) vacate that portion of its order denying Knowles's motion for summary judgment as to Serafina, John and Florence's wrongful death claims, and (2) enter a new order granting Knowles's motion for summary judgment as to Serafina, John and Florence's wrongful death claims. In all other respects the petition is denied. The stay issued by this court on December 23, 2003 is vacated. The parties shall bear their own costs in this writ proceedings. Aaron, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D044277 In re Meyer on Habeas Corpus

The petition is denied without prejudice to refile with proof that the superior court has already considered the matter or after consideration by the superior court.

D044308 In re Bonilla on Habeas Corpus

The motion for expedited treatment is granted. The petition is denied.

D044174 Batchelor et al. v. Richmond

Curtis Richmond's appeal is DISMISSED on the ground the challenged order is not an appealable order. The notice of appeal refers to the court's January 15, 2004 order appointing itself as arbitrator. An appealable order is essential to appellate jurisdiction and an order is not appealable unless expressly made so by statute. (*State Farm Fire & Casualty v. Hardin* (1989) 211 Cal.App.3d 501, 505.) Appealable orders relating to arbitration are listed in Code of Civil Procedure section 1294. The order challenged in this appeal is not made appealable by that statute, but rather is an interlocutory order that may be reviewed on appeal from a judgment confirming the arbitration award, or, in exceptional circumstances, by writ of mandate. (*Id.* at pp. 506-507; *Mid-Wilshire Associates v. O'Leary* (1992) 7 Cal.App.4th 1450, 1454-1455.)

If the order were appealable, the appeal would be dismissed as untimely. Under California Rules of Court, rule 2(a)(2) and (f), a notice of appeal from an appealable order must be filed no later than 60 days after the party filing the notice of appeal is served by a party with a file-stamped copy of the order, accompanied by a proof of service. The documents attached to appellant's civil case information statement show appellant was served in accordance with that rule on January 23, 2004. Consequently, the last day to file a timely notice of appeal from that order, if it were appealable, was March 23, 2004.

Plaintiff's notice of appeal was filed on April 19, 2004. If a notice of appeal is filed late, the reviewing court is without jurisdiction to proceed and must dismiss the appeal. California Rules of Court, rule 2(e); *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.)

The court disregards the references in the notice of appeal to the temporary restraining order and preliminary injunction issued in superior court case No. GIN034564, as Mr. Richmond has separately appealed those orders in case No. D044185.

D044369 Braun et al. v. Superior Court of San Diego County/The People

The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
May 26, 2004

D043008 People v. Mercado

The judgment is affirmed. Haller, J.; We Concur: Nares, Acting P.J., Aaron, J.

**D044152 Gina M. et al. v. Superior Court of the County of San Diego/San Diego County
Health and Human Services Agency**

The attorney for petitioner Gina M. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case as to Gina M. is dismissed.

D043661 In re Jesse O., a Juvenile

The order is affirmed. Haller, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D041904 Anastos et al., v. Lee et al.

(CERTIFIED FOR PUBLICATION) The judgment is affirmed. Plaintiffs are awarded costs on appeal. McIntyre, J.; We Concur: Nares, J., Aaron, J.

**D044068 Nancy M. et al. v. Superior Court of the County of San Diego/San Diego County
Health and Human Services Agency**

The attorney for petitioner Anthony V. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D044076 Amy T. v. Superior Court of the County of San Diego/San Diego County Health and
Human Services Agency**

The attorney for petitioner Amy T. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D044359 In re CHEYANNE J., a Juvenile

The notice of appeal filed on May 19, 2004 in the San Diego Superior Court should have been filed in the Riverside County Superior Court. The appeal is therefore dismissed.

D041610 People v. Mogan

The judgment is affirmed. Irion, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D041517 Padres, L.P. v. Henderson

The order of the superior court granting the Padres's motion to strike Henderson's memorandum of costs is reversed and the matter is remanded for further proceedings on the issue of the amount of attorney fees and costs Henderson is entitled to recover from the Padres as to those claims he succeeded in striking under section 425.16, subdivision (b)(1). Henderson is awarded his costs of appeal. McIntyre, J.; We Concur: Nares, Acting P.J., Irion, J.

D044080 In re Molloy on Habeas Corpus

The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
May 26, 2004 (Continued)

D043747 In re the Marriage of Ping

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a).
The appeal is dismissed.

D041342 People v. Hall

Affirmed. Irion, J.; We Concur: O'Rourke, Acting P.J., Aaron, J.

FOURTH APPELLATE DISTRICT
DIVISION ONE
May 27, 2004

D044027 Parrott v. Holland et al.

The appellant having failed to timely pay the filing fee, the appeal is dismissed.

D041833 Ruiz v. Sysco Food Services

The petition for rehearing is granted. No further briefing or oral argument will be allowed absent any further order from this court. The parties will be notified when this matter is resubmitted for decision.

D042575 Vasquez v. Residential Investments, Inc.

The petition for rehearing is denied. The request for depublication is denied.

D043391 People v. Hernandez

Upon filing an abandonment of appeal, the appeal is dismissed.

D044382 People v. Haithcock

The notice of appeal is premature because sentence has not been pronounced and a judgment of conviction has not been entered. The appeal is dismissed without prejudice to refile a notice of appeal after the judgment has been entered.

D043849 In re D. C., a Juvenile

The appeal is dismissed. O'Rourke, J; We Concur: Haller, Acting P.J., Irion, J.

D043220 People v. Sherman

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D043761 In re Marriage of Peralta and Cardenas

Appellant's motion to reinstate the appeal is granted.

D044078 Stephen C., a Minor, etc. v. James C., et al.

Appellant's motion for relief from default and to vacate the dismissal is granted. The court's order of April 27, 2004 is vacated.

FOURTH APPELLATE DISTRICT
DIVISION ONE
May 28, 2004

D042286 People v. Cervantes

The judgment is affirmed. McConnell, P.J.; We Concur: Haller, J., O'Rourke, J.

D041612 People v. Muncy

The convictions of count 2, kidnapping for purposes of extortion, and count 3, kidnapping for purposes of robbery, are reversed. Muncy's conviction of count 1 is modified to vacate the underlying Penal Code section 209, subdivision (a) offense. The remaining convictions are affirmed, and the matter is remanded for resentencing on those convictions. O'Rourke, J.; We Concur: McIntyre, Acting P.J., Irion, J.

D042755 Cothran v. Sun Carpet & Cleaning, Inc.

The judgment is affirmed. Each party is to bear its own costs on appeal. O'Rourke, J.; We Concur: McConnell, P.J., Irion, J.

D044329 Lanser v. Superior Court of San Diego County/Blackburn

The petition is denied.

D044160 In re Taylor on Habeas Corpus

The petition is denied.

**D043934 Q.B.E. Insurance v. Workers' Compensation Appeals Board and State
Compensation Insurance Fund**

The petition is denied.

D041077 Whispering Ridge Homeowners Association v. Chaudry

The judgments are affirmed. The Association is entitled to attorney's fees and costs on appeal in the amount of \$12,713.85. McConnell, P.J.; We Concur: O'Rourke, J., Aaron, J.

D044327 Lanser v. Superior Court of San Diego County/Blackburn

The petition is denied.

D044372 Castro v. Superior Court of San Diego County/Guzman

The petition is denied.

D044357 In re Taylor on Habeas Corpus

The petition is denied without prejudice to refiling with proof that petitioner has exhausted his administrative remedies and after consideration by the superior court.

D044358 In re Taylor on Habeas Corpus

The petition is denied without prejudice to refiling with proof that petitioner has exhausted his administrative remedies and after consideration by the superior court.

D043436 In re J. W., a Juvenile

The judgment is affirmed. McIntyre, Acting P.J.; We Concur: Aaron, J., Irion, J.